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IN THE UNITED STATES DISTRICT COURT

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FOR THE NORTHERN DISTRICT OF TEXAS

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DALLAS DIVISION

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UNITED STATES OF AMERICA (NUMBER 3: 04-240-G

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HOLY LAND FOUNDATION, ET AL. (October 17, 2007

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18:00

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CONFERENCE REGARDING JUROR WILLIAM NEAL
BEFORE THE HONORABLE A. JOE FISH

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A P P E A R A N C E S:

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NORTHERN DISTRICT OF TEXAS

U.S. Courthouse

1100 Commerce Street

Dallas, Texas 75242

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214/659-8600

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214-254-3139

18:00 1

P R O C E E D I N G S:

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THE COURT: Good afternoon, Ladies and Gentlemen. I asked Ms. Piwoni to contact you and set up this conference because she said that she had received a request from Mr. Jacks for such a conference.

Mr. Jacks.

MR. JACKS: Judge, over the weekend Agent Burns -- She informed us this morning that she was at a sports bar watching the Texas-Oklahoma football game with lots of other people, and a lawyer that is an acquaintance of hers came up to her and said "I know one of the jurors on your case," and she asked, you know, who was it, and it was Mr. Neal according to this lawyer. And they were friends, and she indicated that she had told him back I guess after he received his questionnaire something to the effect that, you know, when you fill out the questionnaire if you have any bias, make sure that you list those so that you don't have to serve on this long trial. There was other conversation. She indicated that she had talked to him I guess a couple of times after the trial had started. One time he made the comment about the lawyers were good, and he also made the comment one time that the evidence was boring. But I also believe that this lawyer -- this woman lawyer had told Ms. Burns that she had told him that the agent on that case is a friend of

18:00 1 mine, and I think she was complimentary of Ms. Burns.

2 Mr. Garrett.

3 MR. GARRETT: I took notes. Lara is outside I
4 think if you want to talk to her, but I thought we would
5 talk among us first, but I had her tell me the sequence of
6 events, and I think Jim is right that during this even
7 encounter at this sports bar she said "I know one of your
8 jurors. His name is William." Went on to physically
9 describe him, being Mr. Neal. And she stated, like Jim
10 said, told him to express any bias he had to keep him off
11 the jury, and she then told him she had a friend who was
12 the FBI agent on the case, Ms. Burns, and then Lara asked,
13 "Have you talked to him since?" And she said, "Yes, I
14 have," and he said that the prosecution and the defense
18:00 15 were both good and the evidence was boring, something to
16 the effect of evidence being boring. Couldn't have been
17 this case. But anyway, at that point Lara stopped asking,
18 didn't ask anymore of her. We wanted to bring it to your
19 attention, clearly, to the Court's attention. We don't
20 know -- Again, Lara did not probe any further of this
21 person in terms of how many times have you talked to him
22 or is there anything else said, those sorts of follow-up
23 conversations were not made.

24 MR. JACKS: I think she did have conversation
25 about what kind of a guy is he, and this woman said, you

18:00 1 know, he's quiet.

2 MR. GARRETT: Yeah, I think the lady when she
3 was saying I know one of your jurors, William the, lady
4 went on sui sponti to say -- Lara said that you can ask if
5 you want to -- he was an intelligent, quiet guy, but not a
6 leader.

7 MS. HOLLANDER: I've lost track who said what.

8 MR. JACKS: Anything about the juror came from
9 the woman lawyer that.

10 MR. DRATEL: I understand, a conversation with
11 Lara Burns.

12 MS. HOLLANDER: But Lara asked her what kind of
13 a guy is he.

14 MR. GARRETT: I'm not sure if she asked that or
18:00 15 if the lady volunteered that. I don't know the answer to
16 that.

17 MR. JONAS: Your Honor, the timing is this woman
18 lawyer informed Mr. Neal about her friendship with Agent
19 Burns at the time the juror received the questionnaire,
20 and if the Court recalls, the jurors during the voir dire
21 were asked if they knew any of the agents or attorneys.

22 MR. DRATEL: He was being truthful. First of
23 all, I'm concerned about someone involved in the case who
24 happens to be an agent running into someone in a bar and
25 asked what you know. If someone asks me do you know a

18:00 1 juror, I wouldn't want to know anything more.

2 MR. GARRETT: Why is that improper?

3 MR. DRATEL: She said I know a juror, and she
4 said which one. I'm concerned about that.

5 THE COURT: I listen to this and certainly
6 appreciate you all wanting to bring it to my attention or
7 our attention because that's something that I think it's
8 proper to do. I personally don't see any issue here.

9 MR. DRATEL: I don't either in terms of what was
10 said.

11 MR. JACKS: Well, they were all asked have you
12 heard anything about this case or do you know anything
13 about this case. So if a friend had said I know an agent
14 on the case.

18:00 15 MR. DRATEL: Doesn't mean you know anything
16 about the case.

17 MS. MORENO: I don't see that as untruthful. It
18 seems like he knew someone who knew someone on the case
19 and still didn't know anything about the case. So I don't
20 see that as an untruthful answer. I guess my question is,
21 are you asking for a remedy or is this just informational?

22 THE COURT: Well, you anticipated my question.
23 I'm not sure whether you are asking me to do anything or
24 not.

25 MR. JACKS: Well, our first priority was to make

18:00 1 it known to the parties and the Court. I think we're
2 still trying to determine, you know, what, if anything --
3 if we have any need for a remedy, right to a remedy or
4 anything like that. I think if circumstances were
5 different, if this were during the trial, I'm not sure
6 that opposing counsel would feel the same way, that it's
7 not a problem, that this person either failed to disclose
8 a relationship with somebody that knew the case agent or
9 the fact that somebody talked to him about the case and
10 the fact that I do know this person that's the case agent.
11 But I think our first interest was to find out, you know,
12 if opposing counsel thought there was an issue or a
13 problem, and then we were going from there, and so I guess
14 now if they are of the opinion that it's not a problem --
18:00 15 First of all, I think I would want something on the record
16 that they don't seek any kind of a remedy and not from
17 just the lawyers, by the defendants themselves, that this
18 would not be something that would later come up as a claim
19 of ineffective assistance of counsel for not seeking some
20 kind of a remedy because I think obviously the defendants
21 would be the one that could appeal anything, not the
22 government, if that you know were to happen in this case.
23 And then I think we would want to consider what
24 options, if any, the government has and what right to any
25 remedy the government would have, but I think the defense

18:00 1 is the one that is kind of in the first position to make a
2 decision as to whether or not they think it's something
3 that requires a remedy or action by the Court.

4 MR. WESTFALL: Your Honor, there wasn't a
5 question on the questionnaire "Do you know somebody who
6 knows somebody whose involved with this case." And then
7 the stuff that Agent Burns learned was that the lawyers
8 were good but the evidence is boring. This is obviously
9 not at the time the questionnaire is being filled out,
10 number one.

11 And Number 2, that doesn't come in the same as
12 juror tampering or misconduct. This is a nonissue. Mr.
13 Jacks is wanting to have a nonissue become something that
14 we can to drag these clients up here to say we're okay
18:00 15 with Mr. Neal being on this jury. The case law is just
16 manifest that something like this wouldn't get somebody
17 kicked off the jury. It's totally up to the Court's
18 discretion of course, but it's not misconduct.

19 MR. JONAS: Your Honor. Mr. Westfall is it your
20 position at the time of voir dire you would not have any
21 interest in knowing whether a juror has a mutual friend
22 with a case agent and whether that mutual friend discussed
23 the case with the potential juror? Is that your position?

24 MS. HOLLANDER: That's not what we heard.

25 MR. JONAS: I'm not asking what you heard. I'm

18:00 1 asking if that's your position. We want to make sure that
2 we're covered.

3 MR. DRATEL: You are covered. You are covered.
4 You are covered.

5 MR. JONAS: We're making sure everything is
6 protected because the way we played out the scenario in
7 our head -- And certainly if Mr. Neal said a friend of
8 mine came to me and after I got the questionnaire and said
9 I'm friends with the case agent and talked about ways of
10 getting off the case, I imagine you all would want to know
11 that to explore whether Mr. Neal had a bias in favor of
12 the case agent and so forth, follow-up questions. The way
13 we perceive it is you are downplaying the situation
14 totally, but that's not the way we envisioned you would
18:00 15 have reacted had you had this information at the time of
16 voir dire.

17 MR. WESTFALL: I would never thought to have
18 asked after I asked do you know anyone that is involved in
19 the case. "Do you know anybody who knows anybody who's
20 involved in this case?" I would never have asked that
21 question. It would never enter my mind to ask this
22 question. The guy was obviously honest on his
23 questionnaire. So whatever advice he got about how to
24 throw the questionnaire was irrelevant at this point if
25 indeed that advice was given. We're assuming at this

18:00 1 point that every statement that's been stated is true.

2 MS. HOLLANDER: It's triple hearsay.

3 MR. JONAS: Certainly that would require the
4 Court to make certain inquiries.

5 MS. HOLLANDER: I'll state on the record that on
6 behalf of my client that I think there is no issue here.

7 MR. DRATEL: I would state the same for Mr. El
8 Mezain.

9 MS. MORENO: I would join on behalf of Mr.
10 Elashi.

11 MR. WESTFALL: On behalf of Odeh, no objection
12 to the continued service of Mr. Neal, nor do I think there
13 would be an issue if we had one.

14 MS. MORENO: I think I expressed that already,
18:00 15 but I will second it.

16 THE COURT: I'm of the opinion from what I have
17 heard that there is no issue either. But I say that
18 without prejudice to the government's right to seek a
19 remedy if they determine that's the appropriate course,
20 and if they do, I'll hear their position at the time.

21 MR. JACKS: Okay.

22 THE COURT: Thank you.

23

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C E R T I F I C A T I O N

I, Cassidi L. Casey, certify that during the proceedings of the foregoing-styled and -numbered cause, I was the official reporter and took in stenotypy such proceedings and have transcribed the same as shown by the above and foregoing Pages 1 through 11 that said transcript is true and correct.

I further certify that the transcript fees and format comply with those prescribed by the court and the Judicial Conference of the United States.

S/Cassidi L. Casey

CASSIDI L. CASEY
UNITED STATES DISTRICT REPORTER
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION
CSR NUMBER 1703

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